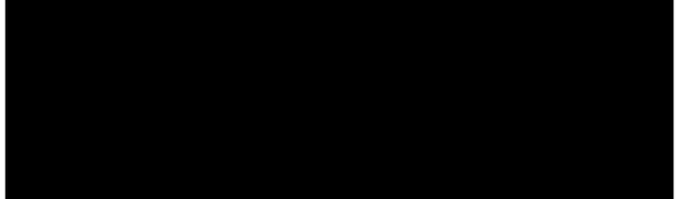


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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



D₂

Date: **OCT 03 2011** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

For
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is an IT (Information Technology) software development firm with 45 employees. To continue to employ the beneficiary in what it designated, on the visa petition, as a mechanical engineer position, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).¹

The appeal is filed to contest both of the independent grounds upon which the director denied this petition, specifically, the director's separate determinations that the petitioner failed (1) to establish that it would employ the beneficiary in a specialty occupation position, and (2) to provide a required itinerary.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

The AAO analyzes the specialty occupation issue according to the statutory and regulatory framework below.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

¹ The petitioner retained two different attorneys during the pendency of the instant visa petition. A Form G-28 Notice of Entry of Appearance submitted with the visa petition indicates that the petitioner was then represented by an [REDACTED] attorney. The appeal in this case was accompanied by a Form G-28 that indicates that the petitioner is now represented by an attorney with an [REDACTED] firm. All representations will be considered, but today's decision will be provided only to the petitioner and to the petitioner's current attorney of record.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

To determine whether a particular job qualifies as a specialty occupation position, the AAO does not rely solely on the job title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*.² Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity or entities ultimately determining the work's content.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which (1) requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which (2) requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States."

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

² The AAO recognizes the *Occupational Outlook Handbook* (hereinafter referred to as the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. All references are to the 2010-2011 online edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000) (hereinafter referred to as *Defensor*). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The petitioner’s office address is on [REDACTED]. On the LCA, the petitioner stated that the work location would be “METRO,” which suggests that the beneficiary would work at more than one worksite. On the visa petition, however, the petitioner indicated that the beneficiary would work at the petitioner’s office.

With the visa petition, previous counsel provided a letter, dated May 13, 2008, from the petitioner’s president, which provided the following description of the duties of the proffered position:

- *Coordinate for installation, operation, maintenance, administration and repair to ensure machines and equipments are installed and functioning according to specifications.*
- *Design and draw applications using Computer Aided Design (CAD) tools and technology.*
- *Design Mechanical components and support processes for ink-jet systems using 3D CAD software tools utilizing test results data and research conclusions.*
- *Maintain and administer computer networks and related computer environments including hardware, systems software, applications software, and all configurations.*

- *Design, configure and test computer hardware, networking software and operating system software.*

The petitioner's president further stated:

To perform these duties, the necessary technical background is typically acquired through a bachelor's degree in Mechanical Engineering, Computer Science, Math, or other related field. Hence, [REDACTED] hires only candidates that possess [sic] at a minimum of bachelor's degree, or its equivalent, in Engineering, or a related field.

The AAO notes that the constellation of mechanical engineering, computer science, math, or a related field as acceptable degrees does not delineate a particular body of highly specialized knowledge that would have to be practically and theoretically applied to perform the proffered position, as is required by the definitions of specialty occupation at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Therefore, this spread of degrees acceptable to the petitioner is not indicative of a specialty occupation. Put another way, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. *See Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988). The AAO finds that the spectrum of academic concentrations acceptable to the petitioner is not indicative of the necessary correlation between the substantive work to be performed by the beneficiary and whatever body of highly specialized knowledge in a specific specialty is attained by a degree identified as acceptable by the petitioner.

Therefore, the assertion that the proffered position can be performed by a person with a degree in mechanical engineering, computer science, math, or a related field implies that the proffered position is not, in fact, in a specialty occupation. Thus, the petitioner's president's assertions about the educational requirements of the proffered position indicate that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty and is not a position in a specialty occupation. This, in itself, is a sufficient reason to dismiss the appeal and to deny the visa petition. The AAO will, however, continue its analysis of the specialty occupation issue, in order to identify other deficiencies in this petition that preclude the AAO from sustaining this appeal.

Because the evidence submitted was insufficient to show that the visa petition was approvable, the service center, on February 23, 2010, issued an RFE in this matter. The service center noted that the beneficiary had been working pursuant to H-1B status accorded pursuant to a previous visa petition and that the petitioner appears to provide computer personnel to work at other companies' locations. The service center asked that the petitioner provide an itinerary stating where, when, and for whom the beneficiary would work. The service center also asked that, if the petitioner planned that the beneficiary would work at more than one location during the period of requested employment, it provide a letter from each end-user of the beneficiary's services stating: (1) the name of the project to which the beneficiary was assigned, (2) the title and duties of the beneficiary's position, (3) the contracted employment dates, (4) whether an intermediary vendor provided the beneficiary's services to the end-user, (5) the name of the intermediary vendor, if applicable, (6) the contact

information from the end-client with the name of an individual, address, and telephone number where the contact can be reached, (7) the name, title and contact information for the person who primarily supervised the beneficiary's work at his remote location, and (8) whether that work site was permitted, if it wished, to assign the beneficiary to work for another company.

The service center added that, if the beneficiary worked or would work on the petitioner's own in-house project, the petitioner should submit (1) evidence describing that project; (2) the length of time the beneficiary worked on that project, (3) the names, titles, and duties of team members assigned to that project, and (4) invoices or other evidence showing that the petitioner normally engages in software development.

In response to the RFE, the petitioner's previous counsel submitted a letter, dated April 1, 2010, from the petitioner's president. That letter reiterated the description of the beneficiary's job duties previously provided, but restated the title of the proffered position as "Mechanical Engineer/Systems Administrator."

The petitioner's president further stated:

The position does not require traveling to, working at, or relocating to client work sites in order to perform the duties. The Mechanical Engineer/System Administrator in our company works full-time at our company offices performing the duties listed above for our company within our company. The Mechanical Engineer/Systems Administrator can also provide support for our consultants that are placed in client sites, however, the Mechanical Engineer/Systems Administrator position itself is located at our company offices . . . as stated on the [visa petition] and LCA.

The AAO reiterates that the LCA submitted to support the visa petition does not indicate that the beneficiary would work exclusively at the petitioner's office in [redacted] but appears to indicate otherwise.

Previous counsel also submitted her own letter, dated April 7, 2010. In it, she stated, "As set forth in the petition, the work is performed internally at the Petitioner's address." She further stated, "[T]he Petitioner has clearly and unequivocally stated in the H1B petition that the Beneficiary will be working at the Petitioner's address, a single location in [redacted]" Although that is correct, the AAO notes, again, that the LCA, by its work location description, "[redacted] Metro," suggests that the beneficiary would not be restricted to working in [redacted], and may work in more than one location.

The director denied the visa petition on April 27, 2010 finding, as was noted above, that the petitioner had not demonstrated that the petitioner would employ the beneficiary in a specialty occupation and had not provided the required itinerary.

On appeal, present counsel stated that no itinerary is required, as the beneficiary would work exclusively at the petitioner's [redacted] location. Counsel stated, incorrectly, that the visa petition

and the LCA have consistently indicated that the beneficiary would work only in [REDACTED]. The AAO reiterates that the LCA strongly suggests otherwise.

Counsel acknowledged that most of the petitioner's workers perform their duties at clients' sites, and that the petitioner has no in-house projects. He stated, however, that not all of the petitioner's workers are at other sites, as the petitioner also offers various classes. Six of those classes are in computer applications, Cognos, Informatica, Oracle PL/SQL, C# and ASP.Net, and Microsoft Sharepoint. The remaining class is a résumé writing workshop. Counsel did not suggest that the beneficiary would teach any of these classes, but that he would maintain the computer systems that the classes require, as well as the petitioner's remaining systems architecture. Counsel did not assert that the beneficiary would have any other duties. The AAO notes that the petitioner has failed to establish that these job duties require a mechanical engineer, which is the job title the petitioner accorded to the proffered position in the visa petition, or a person with at least a bachelor's degree in mechanical engineering.

Counsel stated that the industry-wide educational requirement for performing those duties is a minimum of a bachelor's degree in computer science, computer engineering, management information systems, or a related area. Counsel cited the *Online Wage Library (OWL)* Internet site, section 15-1071.00, which addresses Network and Computer Systems Administrators, as evidence in support of that assertion. The AAO notes, again, that the petitioner did not originally state that the proffered position is a position for a Network and Computer Systems Administrator, but a position for a mechanical engineer. Furthermore, the AAO finds that the LCA filed in support of this petition was certified for a mechanical engineer, and not for a Network and Computer Systems Administrator.

The AAO further notes that the beneficiary does not have a degree in any of the areas counsel listed, but in mechanical engineering. The AAO notes, further still, that counsel's assertion constitutes a substantial revision of the educational requirements previously provided in the petitioner's president's May 13, 2008 letter, which stated that the proffered position requires a bachelor's degree in Mechanical Engineering, Computer Science, Math, or other related field.

Yet further, *OWL*, cited by counsel, indicates that Network and Computer Systems Administrator positions are in Job Zone 4. The *OWL* statement pertinent to those positions, upon which counsel seeks to rely, however, is a condensed version of what the U.S. Department of Labor's *O*Net Online* Internet site states about its Job Zone 4 designation. See the *O*Net Online Help Center*, at www.online.onetcenter.org/help/online/zones, for a discussion of Job Zone 4, which explains that this Zone signifies only that most but not all of the occupations within it require a bachelor's degree. Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations.

That Network and Computer Systems Administrator positions are grouped among occupations of which "most," but not all, "require a four-year bachelor's degree" does not indicate that computer systems administrator positions categorically require a bachelor's degree. Further, it does not indicate that four-year bachelor's degrees required by [REDACTED] occupations must be in a

specific specialty closely related to the requirements of that occupation. Therefore, the *O*Net Online* information is not probative of the proffered position's being a specialty occupation.

Again, the AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook* describes the duties of network and computer systems administrators, in the section entitled Computer Network, Systems, and Database Administrator positions, as follows:

Network and computer systems administrators design, install, and support an organization's computer systems. They are responsible for LANs, WANs, network segments, and Internet and intranet systems. They work in a variety of environments, including large corporations, small businesses, and government organizations. They install and maintain network hardware and software, analyze problems, and monitor networks to ensure their availability to users. These workers gather data to evaluate a system's performance, identify user needs, and determine system and network requirements.

Systems administrators are responsible for maintaining system efficiency. They ensure that the design of an organization's computer system allows all of the components, including computers, the network, and software, to work properly together. Administrators also troubleshoot problems reported by users and by automated network monitoring systems and make recommendations for future system upgrades. Many of these workers are also responsible for maintaining network and system security.

Counsel appears to have abandoned the assertion, made in the petitioner's president's letter of May 13, 2008, that the beneficiary would design Inkjet components. Indeed, although such duties might require a mechanical engineer, the record contains no indication that the petitioner produces such components. Without that duty, however, the proffered position appears to have little in common with mechanical engineer positions, notwithstanding that the petitioner has, at all times, included "mechanical engineer" in the job title of the proffered position. Counsel also appears to have abandoned the assertion that the beneficiary would "design and draw applications using Computer Aided Design (CAD) tools and technology."

The duties of the proffered position as described by the petitioner's president include coordinating the installation, operation, maintenance, administration and repair of equipment and machines and maintaining and administering computer networks and related computer environments including hardware, systems software, applications software, and all configurations. The duties described by counsel are limited to maintaining computer systems and systems architecture.

The petitioner is an IT software development firm, which is clearly a computer-intensive business. The duties of the proffered position pertinent to maintenance of the petitioner's computer system, however, are consistent with the *Handbook* description of the duties of a network and computer

system administrator. The AAO finds that the proffered position is a network and computer system administrator position as described in the *Handbook*.

The *Handbook* describes the education requisite to a network and computer system administrator position as follows:

Network and computer systems administrators often are required to have a bachelor's degree, although an associate degree or professional certification, along with related work experience, may be adequate for some positions. Most of these workers begin as computer support specialists before advancing into network or systems administration positions. (Computer support specialists are covered elsewhere in the *Handbook*.) Common majors for network and systems administrators are computer science, information science, and management information systems (MIS), but a degree in any field, supplemented with computer courses and experience, may be adequate.

That passage indicates that network and computer system administrator positions do not always require a minimum of a bachelor's degree or the equivalent and, when they do, do not necessarily require a degree in a specific specialty.

The *Handbook* does not support the proposition that network and computer systems administrator positions requires a minimum of a bachelor's degree or the equivalent in a specific specialty, nor does the other evidence in the record. The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Although counsel asserted an industry-wide requirement of a minimum of a bachelor's degree or the equivalent in computer science, computer engineering, management information systems, or a related area, for positions akin to the proffered position, he provided no evidence of the recruitment and hiring practices of other companies to support that assertion. The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the first alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no indication that the petitioner's computer network is in any way unique or more complex than the networks of other firms, or that its maintenance is unique or so complex that the proffered position would require a minimum of a bachelor's degree or the equivalent in a specific specialty, notwithstanding that other network and system administrator positions do not. Because the petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with a degree, it has not demonstrated that the proffered position qualifies as a specialty occupation pursuant to the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

As reflected in the earlier discussion of the evidence regarding the proposed duties, they have not been described with sufficient specificity to convey whatever level of specialization and complexity may reside in them. Accordingly, there is no basis for the AAO to find the degree association required by this criterion.

As discussed earlier, the AAO finds that the record of proceeding does not establish that the proffered position is a mechanical engineer position, or one requiring at least a bachelor's degree or the equivalent in that specific specialty. As also earlier noted, the AAO further finds that the duties that the petitioner ascribes to the proffered position generally comport with the network and computer systems administrator occupational-category as discussed in the *Handbook*, and that the *Handbook* indicates that entry into this occupational group does not normally require at least a bachelor's degree, or the equivalent, in a specific specialty. The petitioner has not demonstrated that the duties of the proffered position are more specialized and complex than those of network and system administrator positions not requiring such a degree.

Now, with regard to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the AAO additionally finds that, to the extent that they are specified in the record of proceeding, the proposed duties do indicate a need for knowledge in computers and information technology, but that neither the duty descriptions nor any other evidence in the record of proceeding establishes specialization and complexity requiring knowledge usually associated with a particular minimum level of education in a specific specialty, let alone a bachelor's or higher degree in a specific specialty.

The petitioner has not, therefore, demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to show that the proffered position qualifies as a position in a specialty occupation pursuant to any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The appeal will be dismissed and the visa petition will be denied on this basis.

The remaining basis for the director's decision of denial is the finding that the petitioner failed to provide a required itinerary of the beneficiary's proposed employment. Counsel assures the AAO that the beneficiary would work exclusively at the petitioner's office. However, the bulk of the petitioner's business consists of providing its workers to other companies to work on their projects. Further on the LCA the petitioner, rather than stating that it would employ the beneficiary exclusively in [REDACTED] stated that it would employ him in the [REDACTED] metropolitan area.

In view of those facts, the AAO finds that the petitioner has not demonstrated by a preponderance of the evidence that it would employ the beneficiary solely at its offices or solely at any other single location.

Under these circumstances, the petitioner is obliged, by 8 C.F.R. § 214.2(h)(2)(i)(B), to provide an itinerary as initial evidence submitted with the visa petition. The petitioner has not complied with that requirement, and the appeal will be dismissed and the petition denied for this additional reason.

The petitioner's failure to provide an itinerary raises another issue, however, in addition to failure to comply with the requirement of 8 C.F.R. § 214.2(h)(2)(i)(B). Rather than merely denying the visa petition because of the petitioner's failure to comply with the requirement of 8 C.F.R. § 214.2(h)(2)(i)(B) the service center requested, in the February 23, 2010 RFE, that the petitioner list the locations where the beneficiary would work and provide other data about his proposed employment at those sites. The petitioner did not comply with that request.

Even if the petitioner were not compelled by 8 C.F.R. § 214.2(h)(2)(i)(B) to provide an itinerary as part of the initial evidence in this matter, the regulations provide the director with broad discretionary authority to request evidence in support of a petition. Specifically, pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Moreover, in addition to 8 C.F.R. § 214.2(h)(9)(i), the regulation at 8 C.F.R. § 103.2(b)(8) provides the director broad discretionary authority to require such evidence as contracts and itineraries to establish that the services to be performed by the beneficiary will be in a specialty occupation during the entire period requested in the petition. A service center director may issue a request for evidence that he or she may independently require to assist in adjudicating an H-1B petition, and his or her decision to approve a petition must be based upon consideration of all of the evidence as submitted by the petitioner, both initially and in response to any request for evidence that the director may issue. *See* 8 C.F.R. § 214.2(h)(9). The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), (b)(8), and (b)(12).

The AAO finds that, in the context of the record of proceedings as it existed at the time the request for evidence was issued, the request for itinerary evidence was appropriate under the above cited regulations, not only on the basis that it was required initial evidence, but also on the basis that it was relevant to the material issues of where the beneficiary would work and whether his duties at those locations would qualify as specialty occupation duties, as well as whether the petitioner had any employment for the beneficiary at all.

Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The failure to provide the requested evidence precluded a material line of inquiry. The appeal will be dismissed and the petition denied for this additional reason.

Beyond the decision of the director, the AAO finds that the petition must also be denied on additional grounds, which will now be discussed, that were not addressed in the director's decision. The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the exercise of this function that the AAO identified these additional grounds for denying the petition.

The regulation at 20 C.F.R. § 655.705(b) states, in pertinent part, that in determining whether to approve a Form I-129 visa petition ". . . [USCIS] determines whether the petition is supported by an LCA which corresponds with the petition . . ." In order for an H-1B petition to be approvable, the location shown on the supporting LCA must correspond to the location where the beneficiary would work, as that location determines the prevailing wage threshold that sets the minimum wage or salary that the petitioner must pay.

In the instant case, although the petitioner has asserted that the beneficiary would work solely at its office in Herndon, the nature of the petitioner's business consists predominantly of providing its workers to other companies and the entry on the LCA suggest that it intended to do the same with the beneficiary. The petitioner has not shown, by a preponderance of the evidence, that the beneficiary would work exclusively at its office. As it has not indicated where else the beneficiary might work, it has not demonstrated that the beneficiary would work exclusively in [REDACTED] or in the [REDACTED] metropolitan area, either. The petitioner has not, therefore, demonstrated that the LCA is valid for employment in all of the locations where the beneficiary would work. The appeal will be dismissed and the petition denied for this additional reason.

Further, section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;³
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

³ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

However, in the instant visa category, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*.

The initial description of the duties of the proffered position included some duties related to mechanical engineering, the field in which the beneficiary has a degree. Counsel appears, however, to have abandoned that description of duties. The remaining duties, those that counsel pressed on appeal, are very closely related to computer systems. In order to prevail, the petitioner would be obliged to demonstrate the specific field in which the proffered position requires a minimum of a bachelor's degree or the equivalent, and to demonstrate, pursuant to section 214(i)(2) of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(C) that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that field*. The finding pertinent to the specialty occupation issue, however, renders further inquiry into the beneficiary's qualifications to work in the proffered position moot.

The petition will be denied for all of the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

ORDER: The appeal is dismissed. The petition is denied.